# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS MARSHALL DIVISION

UNILOC 2017, LLC

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Case No. 2:18-cv-00493-JRG-RSP

Case No. 2:18-cv-00497-JRG-RSP

Case No. 2:18-cv-00503-JRG-RSP

FILED UNDER SEAL PURSUANT

TO PROTECTIVE ORDER

DEFENDANT GOOGLE LLC'S MOTION FOR FEES AND COSTS PURSUANT TO 28 U.S.C. § 1927

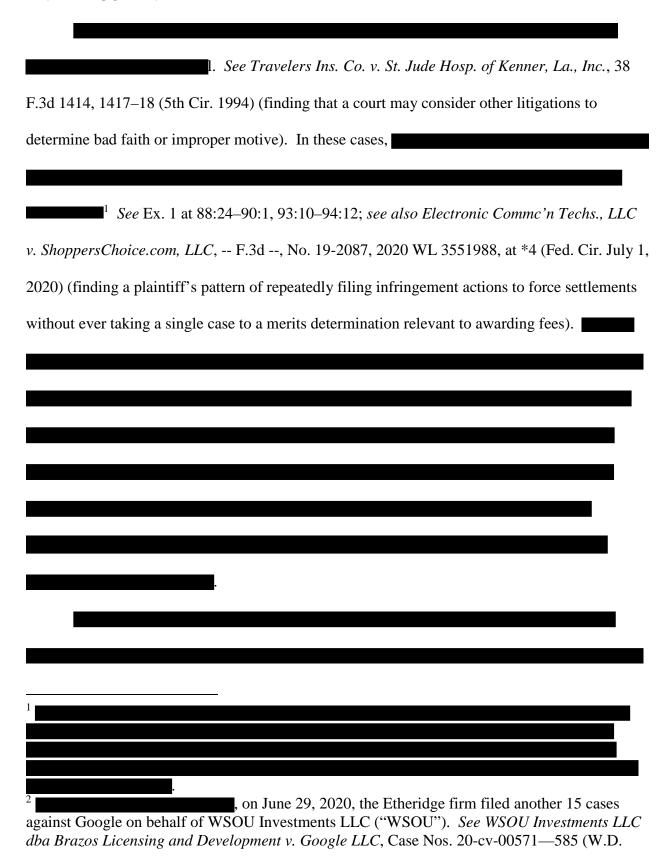
#### I. INTRODUCTION

As explained in Google LLC's ("Google") motions for attorneys' fees (the "Fee Motions") in Case Nos. 18-cv-493, 18-cv-497, and 18-cv-503 (collectively, "Dismissed Cases"), the substantive weakness of the Dismissed Cases and the unreasonable manner in which Uniloc 2017, LLC ("Uniloc") litigated them warrant an award of attorneys' fees under 35 U.S.C. § 285. The Court should also hold Uniloc and its outside counsel—the Etheridge Law Firm ("Etheridge" firm)—jointly and severally liable for Google's attorneys' fees and expert fees under 28 U.S.C. § 1927 because

#### II. LEGAL STANDARD

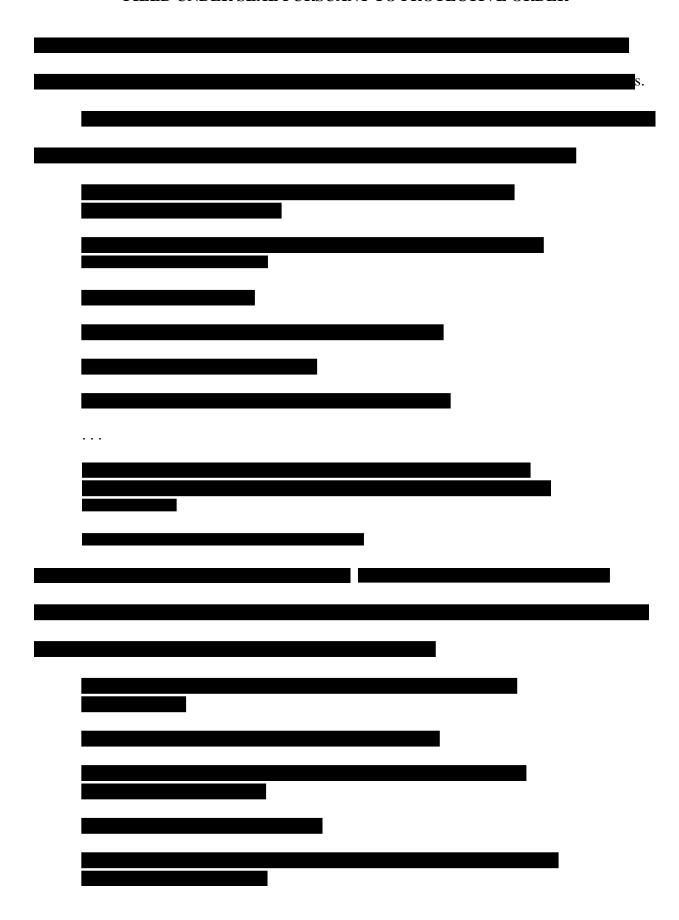
Counsel who "unreasonably and vexatiously" multiplies legal proceedings can be held liable for fees and costs under 28 U.S.C. § 1927. Conduct is "unreasonabl[e] and vexatious[]" when counsel pursues a baseless claim in bad faith, for an improper motive, or with reckless disregard of the duty owed to the court. *Morrison v. Walker*, 939 F.3d 633, 637–38 (5th Cir. 2019). To "shift the entire cost of defense, the claimant must prove, by clear and convincing evidence, that every facet of the litigation was patently meritless." *Id.* at 637 n.13 (citation omitted).

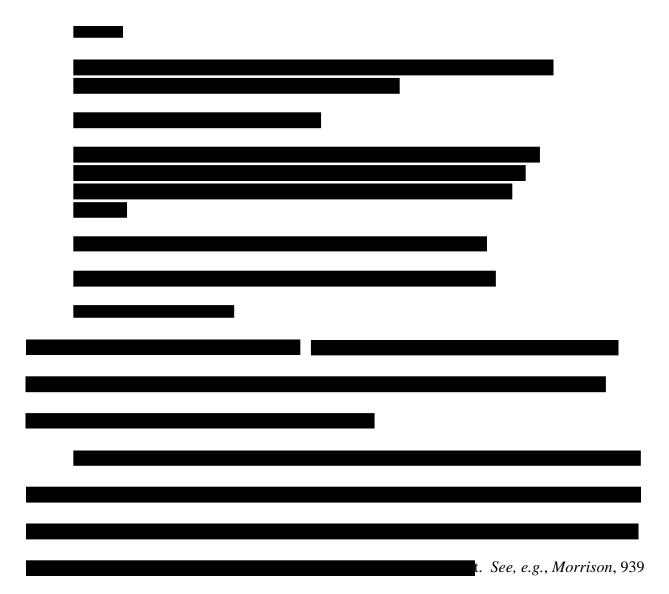
# III. ARGUMENT



. <i>Morrison</i> , 939 F.3d at 638 (finding no dispute that
the proceedings were "multiplied" where there were "repeated[] filings based only on the
meritless claim.") (citation omitted).
. Simply put, studied "[i]gnorance is sanctionable, not bliss." Bhd. of
Tex.). were among 106 cases that the Etheridge firm filed against
five defendants, all in the Western District of Texas. Ex 4.
Ex. 5 at Frame 846; Ex. 6 at Uniloc
Common Production to Google 0010802 (Exhibit A).

Locomotive Eng'rs & Trainmen v. Union Pac. R.R. Co., 905 F.3d 537, 544 (7th Cir. 2018). And Section 1927 exists for the very purpose of deterring counsel from using a "head-in-the-sand approach" for the sole purpose of stringing out baseless litigation. See, e.g., Fred A. Smith Lumber Co. v. Edidin, 845 F.2d 750, 753 (7th Cir. 1988) (reversing denial of sanctions against counsel for "employing 'the ostrich-like tactic of pretending that potentially dispositive authority against a litigant's contention does not exist'").





F.3d at 638 ("An attorney acts with 'reckless disregard' of his duty to the court when he, without reasonable inquiry, advances a baseless claim despite clear evidence undermining his factual contentions."); *Ratliff v. Stewart*, 508 F.3d 225, 235 (5th Cir. 2007) (finding "improper purpose" when plaintiff maintained suit without further investigation after notification that it sued the wrong defendant); *see Phonometrics, Inc. v. Westin Hotel Co.*, 350 F.3d 1242, 1247–48 (Fed. Cir. 2003) (affirming award under § 1927 because the patentee maintained suit despite a claim construction that precluded infringement); *MarcTec LLC v. Johnson & Johnson*, 664 F.3d 907,

918 (Fed. Cir. 2012) ("[The patentee's] proposed claim construction, which . . . was unsupported

by the intrinsic record, was frivolous and supports a finding of bad faith.").

IV. CONCLUSION

For the foregoing reasons, Google respectfully requests that the Court grant this motion

and hold Uniloc and the Etheridge firm jointly and severally liable for Google's reasonable

attorneys' fees and expert fees, and other non-taxable costs, in the amounts set forth in each of

Google's Fee Motions.

Dated: July 6, 2020

Respectfully submitted,

/s/Robert Unikel with permission, by

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### **CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that counsel for Google has complied with the meet and confer requirement in Local Rule CV-7(h). The personal conference required by Local Rule CV-7(h) was conducted on July 6, 2020 via telephonic conference with the following participants: Jim Etheridge, Ryan Loveless and Travis Richins on behalf of Uniloc 2017, LLC, and Michael Jones, Patrick Clutter, Robert Unikel, Gregory Lanier, Tracy Stitt, and Nicholas Lee on behalf of Google LLC. Agreement could not be reached as to the items presented to the Court in this Motion because the parties disagree as to whether Google should be awarded fees and non-taxable costs. Discussions have conclusively ended in an impasse, leaving an open issue for the Court to resolve. This motion is opposed.

/s/ Michael E. Jones
Michael E. Jones

### CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I hereby certify that the foregoing document and all supporting declarations and exhibits thereto are being filed under seal pursuant to the terms of the Protective Order.

/s/ Michael E. Jones
Michael E. Jones

#### **CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via electronic mail on July 6, 2020.

I also hereby certify that all counsel of record who have consented to electronic service are being served with a notice of filing of this document, under seal, pursuant to L.R. CV-5(a)(7) on July 6, 2020.

/s/ Michael E. Jones
Michael E. Jones